

AMENDED IN SENATE MAY 18, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 1149

Introduced by Senator Speier

(Coauthors: Assembly Members Knox and Kuehl)

February 26, 1999

An act to amend Section 12945.2 of, and to add Section 12945.3 to, the Government Code, relating to employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1149, as amended, Speier. Family care and medical leave: employers.

Existing law makes it an unlawful employment practice for any employer to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Existing law exempts certain employers from that provision by providing that it is not an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed. Existing law defines "employer," for purposes of those requests, as any person who directly employs 50 or more persons to perform services for a wage or salary. Existing law defines "child" as a biological, adopted, or foster child, a stepchild, a legal ward,

or a child of a person standing in loco parentis who is either under 18 years of age or an adult dependent child.

This bill would instead provide that exemption for employers that employ less than 20 employees within 75 miles of the worksite where that employee is employed and would define “employer” as any person who directly employs 20 or more persons to perform services for a wage or salary. This bill, in addition, would define “child” as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

Existing law also prohibits any employer, because of the pregnancy, childbirth, or related medical condition of any female employee, to, among other things, refuse to appoint her, to refuse to permit her to receive the same benefits or privileges of employment granted by that employer to other persons not so affected who are similar in their ability or inability to work, as specified, or to refuse to permit her to take a leave on account of pregnancy for a reasonable period of time not to exceed 4 months, as specified.

This bill would require that, in addition to the responsibilities imposed on employers with respect to family care and medical leave and leave for pregnancy, childbirth, or a related medical condition, that the Department of Fair Employment and Housing (department) make information sheets available to employers upon the request of an employer.

This bill would require each employer to distribute the information sheets provided by the department to its employees, unless the employer provides information to its employees relating to family care and medical leave and pregnancy disability leave that contains, among other things, the definition of family care and medical leave and pregnancy and disability leave entitlements, and information about the right to take leave to care for the serious health condition of a child, spouse, or parent, or to bond with a newborn, adopted, or foster child. Each employer would also be required to give its employees reasonable advance notice of any requirements it adopts pertaining to family care and medical leave and pregnancy disability leave, including an employee’s rights, duties, and obligations when taking a leave, and an



explanation of any employer attendance or leave policies and how those requirements comply with the family care and medical leave and pregnancy disability leave requirements. If an employer fails to provide that information, the employer would be precluded from taking certain actions against the employee, as specified.

~~This bill would require every employer to establish, implement, and maintain an effective training program to ensure compliance with the family care and medical leave provisions, and would require the training program to, among other things, be provided to all managers, supervisors, human resource directors, health benefit administrators, or other personnel with responsibility for any aspect of the family care and medical leave or pregnancy disability leave entitlements of employees.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12945.2 of the Government
2 Code is amended to read:
3 12945.2. (a) Except as provided in subdivision (b), it
4 shall be an unlawful employment practice for any
5 employer, as defined in paragraph (2) of subdivision (c),
6 to refuse to grant a request by any employee with more
7 than 12 months of service with the employer, and who has
8 at least 1,250 hours of service with the employer during
9 the previous 12-month period, to take up to a total of 12
10 workweeks in any 12-month period for family care and
11 medical leave. Family care and medical leave requested
12 pursuant to this subdivision shall not be deemed to have
13 been granted unless the employer provides the
14 employee, upon granting the leave request, a guarantee
15 of employment in the same or a comparable position
16 upon the termination of the leave. The commission shall
17 adopt a regulation specifying the elements of a
18 reasonable request.
19 (b) Notwithstanding subdivision (a), it shall not be an
20 unlawful employment practice for an employer to refuse

1 to grant a request for family care and medical leave by an
2 employee if the employer employs less than 20 employees
3 within 75 miles of the worksite where that employee is
4 employed.

5 (c) For purposes of this section:

6 (1) “Child” means a biological, adopted, or foster
7 child, a stepchild, a legal ward, or a child of a person
8 standing in loco parentis.

9 (2) “Employer” means either of the following:

10 (A) Any person who directly employs 20 or more
11 persons to perform services for a wage or salary.

12 (B) The state, cities, and any other political or civil
13 subdivision of the state.

14 (3) “Family care and medical leave” means any of the
15 following:

16 (A) Leave for reason of the birth of a child of the
17 employee, the placement of a child with an employee in
18 connection with the adoption or foster care of the child
19 by the employee, or the serious health condition of a child
20 of the employee.

21 (B) Leave to care for a parent or a spouse who has a
22 serious health condition.

23 (C) Leave because of an employee’s own serious
24 health condition that makes the employee unable to
25 perform the functions of the position of that employee,
26 except for leave taken for disability on account of
27 pregnancy, childbirth, or related medical conditions.

28 (4) “Employment in the same or a comparable
29 position” means employment in a position that has the
30 same or similar duties and pay that can be performed at
31 the same or similar geographic location as the position
32 held prior to the leave.

33 (5) “FMLA” means the federal Family and Medical
34 Leave Act of 1993 (P.L. 103-3).

35 (6) “Health care provider” means any of the following:

36 (A) An individual holding either a physician’s and
37 surgeon’s certificate issued pursuant to Article 4
38 (commencing with Section 2080) of Chapter 5 of Division
39 2 of the Business and Professions Code, an osteopathic
40 physician’s and surgeon’s certificate issued pursuant to

Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(7) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(8) “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee’s accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee’s own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

1 (f) (1) During any period that an eligible employee
2 takes leave pursuant to subdivision (a) or takes leave that
3 qualifies as leave taken under the FMLA, the employer
4 shall maintain and pay for coverage under a “group
5 health plan,” as defined in Section 5000(b)(1) of the
6 Internal Revenue Code of 1986, for the duration of the
7 leave, not to exceed 12 workweeks in a 12-month period,
8 commencing on the date leave taken under the FMLA
9 commences, at the level and under the conditions
10 coverage would have been provided if the employee had
11 continued in employment continuously for the duration
12 of the leave. Nothing in the preceding sentence shall
13 preclude an employer from maintaining and paying for
14 coverage under a “group health plan” beyond 12
15 workweeks. An employer may recover the premium that
16 the employer paid as required by this subdivision for
17 maintaining coverage for the employee under the group
18 health plan if both of the following conditions occur:

19 (A) The employee fails to return from leave after the
20 period of leave to which the employee is entitled has
21 expired.

22 (B) The employee’s failure to return from leave is for
23 a reason other than the continuation, recurrence, or onset
24 of a serious health condition that entitles the employee to
25 leave under subdivision (a) or other circumstances
26 beyond the control of the employee.

27 (2) Any employee taking leave pursuant to
28 subdivision (a) shall continue to be entitled to participate
29 in employee health plans for any period during which
30 coverage is not provided by the employer under
31 paragraph (1), employee benefit plans, including life,
32 short-term, or long-term disability or accident insurance,
33 pension and retirement plans, and supplemental
34 unemployment benefit plans to the same extent and
35 under the same conditions as apply to an unpaid leave
36 taken for any purpose other than those described in
37 subdivision (a). In the absence of these conditions an
38 employee shall continue to be entitled to participate in
39 these plans and, in the case of health and welfare
40 employee benefit plans, including life, short-term, or

1 long-term disability or accident insurance, or other
2 similar plans, the employer may, at his or her discretion,
3 require the employee to pay premiums, at the group rate,
4 during the period of leave not covered by any accrued
5 vacation leave, or other accrued time off, or any other
6 paid or unpaid time off negotiated with the employer, as
7 a condition of continued coverage during the leave
8 period. However, the nonpayment of premiums by an
9 employee shall not constitute a break in service, for
10 purposes of longevity, seniority under any collective
11 bargaining agreement, or any employee benefit plan.

12 For purposes of pension and retirement plans, an
13 employer shall not be required to make plan payments
14 for an employee during the leave period, and the leave
15 period shall not be required to be counted for purposes
16 of time accrued under the plan. However, an employee
17 covered by a pension plan may continue to make
18 contributions in accordance with the terms of the plan
19 during the period of the leave.

20 (g) During a family care and medical leave period, the
21 employee shall retain employee status with the employer,
22 and the leave shall not constitute a break in service, for
23 purposes of longevity, seniority under any collective
24 bargaining agreement, or any employee benefit plan. An
25 employee returning from leave shall return with no less
26 seniority than the employee had when the leave
27 commenced, for purposes of layoff, recall, promotion, job
28 assignment, and seniority-related benefits such as
29 vacation.

30 (h) If the employee's need for a leave pursuant to this
31 section is foreseeable, the employee shall provide the
32 employer with reasonable advance notice of the need for
33 the leave.

34 (i) If the employee's need for leave pursuant to this
35 section is foreseeable due to a planned medical treatment
36 or supervision, the employee shall make a reasonable
37 effort to schedule the treatment or supervision to avoid
38 disruption to the operations of the employer, subject to
39 the approval of the health care provider of the individual
40 requiring the treatment or supervision.

1 (j) (1) An employer may require that an employee's
2 request for leave to care for a child, a spouse, or a parent
3 who has a serious health condition be supported by a
4 certification issued by the health care provider of the
5 individual requiring care. That certification shall be
6 sufficient if it includes all of the following:

7 (A) The date on which the serious health condition
8 commenced.

9 (B) The probable duration of the condition.

10 (C) An estimate of the amount of time that the health
11 care provider believes the employee needs to care for the
12 individual requiring the care.

13 (D) A statement that the serious health condition
14 warrants the participation of a family member to provide
15 care during a period of the treatment or supervision of
16 the individual requiring care.

17 (2) Upon expiration of the time estimated by the
18 health care provider in subparagraph (C) of paragraph
19 (1), the employer may require the employee to obtain
20 recertification, in accordance with the procedure
21 provided in paragraph (1), if additional leave is required.

22 (k) (1) An employer may require that an employee's
23 request for leave because of the employee's own serious
24 health condition be supported by a certification issued by
25 his or her health care provider. That certification shall be
26 sufficient if it includes all of the following:

27 (A) The date on which the serious health condition
28 commenced.

29 (B) The probable duration of the condition.

30 (C) A statement that, due to the serious health
31 condition, the employee is unable to perform the function
32 of his or her position.

33 (2) The employer may require that the employee
34 obtain subsequent recertification regarding the
35 employee's serious health condition on a reasonable basis,
36 in accordance with the procedure provided in paragraph
37 (1), if additional leave is required.

38 (3) (A) If the employer has reason to doubt the
39 validity of the certification provided pursuant to this
40 section, the employer may require, at the employer's

1 expense, that the employee obtain the opinion of a second
2 health care provider, designated or approved by the
3 employer, concerning any information certified under
4 paragraph (1).

5 (B) The health care provider designated or approved
6 under subparagraph (A) shall not be employed on a
7 regular basis by the employer.

8 (C) If the second opinion described in subparagraph
9 (A) differs from the opinion in the original certification,
10 the employer may require, at the employer's expense,
11 that the employee obtain the opinion of a third health
12 care provider, designated or approved jointly by the
13 employer and the employee, concerning the information
14 certified under paragraph (1).

15 (D) The opinion of the third health care provider
16 concerning the information certified under paragraph
17 (1) shall be considered to be final and shall be binding on
18 the employer and the employee.

19 (4) As a condition of an employee's return from leave
20 taken because of the employee's own serious health
21 condition, the employer may have a uniformly applied
22 practice or policy that requires the employee to obtain
23 certification from his or her health care provider that the
24 employee is able to resume work. Nothing in this
25 paragraph shall supersede a valid collective bargaining
26 agreement that governs the return to work of that
27 employee.

28 (l) It shall be an unlawful employment practice for an
29 employer to refuse to hire, or to discharge, fine, suspend,
30 expel, or discriminate against, any individual because of
31 any of the following:

32 (1) An individual's exercise of the right to family care
33 and medical leave provided by subdivision (a).

34 (2) An individual's giving information or testimony as
35 to his or her own family care and medical leave, or
36 another person's family care and medical leave, in any
37 inquiry or proceeding related to rights guaranteed under
38 this section.

39 (m) An employer shall take all reasonable steps
40 necessary to ensure that employees are afforded all family

1 care and medical leave entitlements provided in this
2 section and to prevent any unlawful employment actions
3 from being taken against any applicant or employee in
4 violation of subdivision (l).

5 (n) The provisions of this section shall be construed as
6 separate and distinct from those of Section 12945.

7 (o) Leave provided for pursuant to this section may be
8 taken in one or more periods. The 12-month period
9 during which 12 workweeks of leave may be taken under
10 this section shall run concurrently with the 12-month
11 period under the FMLA, and shall commence the date
12 leave taken under the FMLA commences.

13 (p) If both parents entitled to leave under subdivision
14 (a) are employed by the same employer, the employer
15 shall not be required to grant leave in connection with the
16 birth, adoption, or foster care of a child that would allow
17 the parents family care and medical leave totaling more
18 than the amount specified in subdivision (a).

19 (q) (1) Notwithstanding subdivision (a), an
20 employer may refuse to reinstate an employee returning
21 from leave to the same or a comparable position if all of
22 the following apply:

23 (A) The employee is a salaried employee who is
24 among the highest paid 10 percent of the employer's
25 employees who are employed within 75 miles of the
26 worksite at which that employee is employed.

27 (B) The refusal is necessary to prevent substantial and
28 grievous economic injury to the operations of the
29 employer.

30 (C) The employer notifies the employee of the intent
31 to refuse reinstatement at the time the employer
32 determines the refusal is necessary under subparagraph
33 (B).

34 (2) If the leave has already commenced, the employer
35 shall give the employee a reasonable opportunity to
36 return to work following the notice prescribed by
37 subparagraph (C).

38 (r) Leave taken by an employee pursuant to this
39 section shall run concurrently with leave taken pursuant
40 to the FMLA, except for any leave taken under the FMLA

1 for disability on account of pregnancy, childbirth, or
2 related medical conditions. The aggregate amount of
3 leave taken under this section or the FMLA, or both,
4 except for leave taken for disability on account of
5 pregnancy, childbirth, or related medical conditions,
6 shall not exceed 12 workweeks in a 12-month period. An
7 employee is entitled to take, in addition to the leave
8 provided for under this section and the FMLA, the leave
9 provided for in Section 12945, if the employee is otherwise
10 qualified for that leave.

11 SEC. 2. Section 12945.3 is added to the Government
12 Code, to read:

13 12945.3. (a) For purposes of this section:

14 (1) “Employer” means an employer as defined in
15 paragraph (2) of subdivision (c) of Section 12945.2.

16 (2) “PDL” means pregnancy disability leave, as
17 established pursuant to Section 12945.

18 (b) The department shall make information sheets on
19 the rights of employees to take family care and medical
20 leave under Section 12945.2 and on PDL entitlements
21 available to employers for reproduction and distribution
22 by employers to their employees. The department shall
23 provide one copy of each information sheet to an
24 employer upon request. The information sheets shall be
25 available at each office of the department, and shall be
26 mailed upon request if the request includes a
27 self-addressed envelope with postage affixed. Multiple
28 copies of the information sheets shall be made available
29 through the Office of Documents and Publications of the
30 Department of General Services.

31 (c) In addition to the duties imposed on employers
32 pursuant to subdivision (m) of Section 12945.2, each
33 employer shall ensure that its workplace is free from
34 employment practices that are unlawful under Section
35 12945.2 and any rules or regulations adopted pursuant to
36 Section 12945.2 by implementing all of the following
37 minimum requirements:

38 (1) Each employer shall obtain the information sheets
39 on Section 12945.2 and PDL entitlements from the
40 department. Each employer shall distribute copies of the

1 information sheets to its employees, unless the employer
2 provides information to its employees that contains, at a
3 minimum, the following:

4 (A) The definition of family care and medical leave
5 under Section 12945.2 and the entitlements to PDL under
6 Section 12945.

7 (B) The right of an eligible employee under Section
8 12945.2 to take leave of up to 12 weeks, with the right to
9 reinstatement and continued health care coverage
10 during leave.

11 (C) The right of an eligible employee under Section
12 12945.2 to take leave to care for one's own serious health
13 condition or the serious health condition of a child,
14 spouse, or parent.

15 (D) The right of an eligible employee to take leave
16 under Section 12945.2 to bond with a newborn, adopted,
17 or foster child.

18 (E) The right of an eligible employee to take leave
19 under Section 12945.2 on an intermittent or reduced
20 schedule basis, if medically necessary.

21 (F) The right of an eligible employee under Section
22 12945.2 to use sick, vacation, personal, or other paid leave
23 while on leave under Section 12945.2.

24 (G) The right of an eligible employee who is disabled
25 by pregnancy, childbirth, or a related medical condition
26 to take PDL of up to four months pursuant to Section
27 12945, with the right to reinstatement, even if she is not
28 otherwise eligible for leave under Section 12945.2.

29 (H) A complete explanation in writing of an
30 employee's rights, duties, and obligations when asserting
31 his or her right to leave under Sections 12945 and 12945.2.

32 (I) The internal complaint process made available by
33 the employer to the employee.

34 (J) The legal remedies and complaint process
35 available to employees through the department and
36 commission with regard to disputes arising under Section
37 12945, regarding PDL requests, or Section 12945.2.

38 (K) Directions on how employees may contact the
39 department and commission.



(L) The prohibitions established by subdivision (f) of Section 12940, subdivision (l) of Section 12945.2, Section 19702.3, and Sections 7287.8 and 7297.7 of Title 2 of the California Code of Regulations, against retaliating against any employee and against opposing the practices prohibited by this article or for filing a complaint with, or otherwise participating in an investigation, proceeding, or hearing conducted by, the department or commission.

(d) Each employer shall deliver the information sheets or information required to be distributed to all employees pursuant to subdivision (c) in a manner that ensures distribution to each employee, such as including the information sheets or information with the employee's paycheck.

(e) Each employer shall provide its employees with reasonable advance notice of any requirements that it adopts pertaining to family care and medical leave or PDL, including any requirements relating to an employee's rights, duties, and obligations when taking a leave and an explanation of any employer attendance or leave policies, or both, and how those policies operate in compliance with Section 12945.2 and PDL requirements. If an employer fails to provide this information, the employer may not take any adverse action against the employee or deny the employee leave for failing to provide the employer with advance notice of the need to take the leave.

~~(f) Each employer shall establish, implement, and maintain an effective training program to ensure compliance with the requirements of Section 12945.2. The training program shall, at a minimum, include the following:~~

~~(1) The employer shall train all managers, supervisors, human resource directors, health benefit administrators, or other personnel with responsibility for any aspect of employees' leave under Section 12945.2 or PDL entitlements, or both, including maintenance of health benefits.~~

~~(2) The employer shall train each employee described in paragraph (1), within six months of the effective date~~

1 of this section. Thereafter, training shall be provided to
2 each employee (A) no later than three months after the
3 date the employee was hired, (B) no later than three
4 months after any statutory or regulatory changes are
5 made to Section 12945.2 or any regulations thereto, and
6 (C) no less than once per year.

7 (3) The employer shall identify the person or persons
8 responsible for implementing the training program and
9 shall maintain a record of each training session
10 conducted, including dates of training sessions and the
11 names and job titles of the trainer and employees
12 attending the training sessions. The employer shall
13 maintain the records of each training session for a period
14 of three years from the date of the training session.

15 (4) The training shall effectively communicate the
16 employer's obligations and the employees' entitlements
17 and obligations under Section 12945.2, including the
18 relationship between entitlements to leave under Section
19 12945.2 and PDL, and shall address all requirements set
20 forth in subdivisions (c), (d), and (e).